

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SANITEC INDUSTRIES, INC.,)
)
Plaintiff,)
)
v.) Civil Action No. 04-1386-JJF
)
SANITEC WORLDWIDE, LTD.,)
)
Defendant.)

[JOINT PROPOSED¹] RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties will exchange by August 5, 2005 the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.
2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before [plaintiff proposes: September 1, 2005] [defendant proposes: December 31, 2005].
3. **Discovery.**
 - (a) Exchange and completion of contention interrogatories, identification of fact witnesses, and document production shall be commenced so as to be completed by [plaintiff proposes: December 15, 2005] [defendant proposes: April 15, 2006].
 - (b) Maximum of 20 interrogatories, including contention interrogatories, for each side.
 - (c) Maximum of 30 requests for admission by each side.

¹ The parties differ in certain respects. Their differences are noted throughout in brackets showing both the plaintiff's proposal and the defendant's proposal.

(d) Maximum of four (4) depositions by plaintiff and four (4) by defendant, excluding expert depositions.

(e) On or before [plaintiff proposes: January 13, 2006] [defendant proposes: May 13, 2006], the parties shall serve expert reports on all issues for which a party bears the burden of proof. On or before [plaintiff proposes: February 10, 2006] [defendant proposes: June 10, 2006], the parties shall serve rebuttal expert reports. All such reports shall be in the form and content as required by Fed. R. Civ. P. 26(a)(2)(B).

(f) Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or ordered by the Court.

4. Discovery Disputes.

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages and must specify that the filing is pursuant to the Discovery Dispute procedures provided in this paragraph. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the dispute is ready for decision.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before [plaintiff proposes: September 1, 2005] [defendant proposes: December 31, 2005].

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before [plaintiff proposes: February 28, 2006] [defendant proposes: June 28, 2006]. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed after the above date without leave of the Court for good cause shown. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.** The parties anticipate that as the case progresses, the need to submit briefs to the Court regarding claim construction may arise. However, at the present time, the parties lack sufficient information to determine whether a Markman hearing will be necessary, or to present a proposed claim construction briefing schedule to the Court. Accordingly, on or before March 6, 2006, the parties will advise the Court whether a Markman hearing will be necessary, and, if so, of their proposed schedule for claim construction briefing.

8. **Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of the Court

for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

- (b) No facsimile transmissions will be accepted.
- (c) No telephone calls shall be made to Chambers.
- (d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. Pretrial Conference and Trial. After reviewing the parties' Proposed Scheduling Order, the Court will schedule a Pretrial Conference.

The Court will determine whether the trial date should be scheduled when the Scheduling Order is entered or at the Pretrial Conference. If scheduling of the trial date is deferred until the Pretrial Conference, the parties and counsel shall anticipate and prepare for a trial to be held within sixty (60) to ninety (90) days of the Pretrial Conference.

DATEUNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned counsel certifies that, on August 1, 2005, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following

David L. Finger, Esq.
Finger & Slanina
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801

/s/ Richard D. Kirk (#922)